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Criminal accountability of United Nations officials and experts on mission

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Report of the Secretary-General

Summary

The present report has been prepared pursuant to paragraph 10 of General Assembly resolution 62/63 entitled "Criminal accountability of United Nations officials and experts on mission". Sections II and III contain information received from Governments about the extent their national laws establish jurisdiction, particularly over crimes of a serious nature committed by their nationals while serving as United Nations officials or experts on mission, as well as information on cooperation among States and with the United Nations in the exchange of information and the facilitation of investigations and prosecution of such individuals. Section IV provides information, prepared by the Secretariat, regarding bringing credible allegations that reveal that a crime may have been committed by United Nations officials to the attention of States against whose nationals such allegations are made. Sections V and VI detail recent activities by the Secretariat on ensuring that prospective experts on mission are informed of the expectation that they should meet high standards in their conduct and behaviour, as well as regarding taking other practical measures to strengthen existing training on United Nations standards of conduct, including through predeployment and in-mission induction training.

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I. Introduction

1. In its resolution 62/63, entitled "Criminal accountability of United Nations officials and experts on mission", the General Assembly requested the Secretary-General to report on the implementation of the resolution on the basis of information received from Governments, in particular with respect to paragraphs 3 and 9. The request was understood as not being limited to paragraphs 3 and 9, but also to include the implementation of those operative paragraphs which called for the taking of specific actions, either by Governments of Member States or by the Secretariat. Accordingly, the present report provides a synopsis of efforts undertaken to implement paragraphs 3 to 6, and 9 of resolution 62/63, on the basis of information received from Governments as well as that emanating from the Secretariat. Sections II to IV of the report deal with activities and information received relating to the criminal accountability of United Nations officials and experts on mission, as required by paragraphs 3, 4 and 9. The remaining sections cover activities undertaken by the Secretariat to implement paragraphs 5 and 6.

2. With regard to paragraphs 3 and 4, by a note verbale dated 31 December 2007, the Secretary-General drew the attention of all States to resolution 62/63 and requested them to submit, by 1 July 2008, information on the extent to which their national laws establish jurisdiction particularly over crimes of a serious nature committed by their nationals while serving as United Nations officials or experts on mission, as well as information on cooperation among States and with the United Nations in the exchange of information and the facilitation of investigations and prosecutions of such individuals. As at 19 August 2008, replies were received from 28 States (as summarized in sects. II and III, below).

3. Furthermore, section IV provides information, prepared by the Secretariat, regarding the bringing of credible allegations that reveal that a crime may have been committed by United Nations officials to the attention of States against whose nationals such allegations are made, pursuant to paragraph 9. Sections V and VI detail recent activities by the Secretariat in ensuring that prospective experts on mission are informed of the expectation that they should meet high standards in their conduct and behaviour (resolution 62/63, para. 5), as well as regarding the taking of other practical measures to strengthen existing training on United Nations standards of conduct, including through predeployment and in-mission induction training (ibid., para. 6).

II. Establishment of jurisdiction over crimes of a serious nature

4. **Argentina** referred to article 1 of the Argentine Penal Code, Law No. 11729, which establishes the fundamental principle that Argentine criminal law applies to offences committed in the national territory. This principle is complemented by the "effects" doctrine, or protective principle, whereby the State's criminal law applies to offences which, though not committed within its territory, nonetheless produce effects therein. Paragraph 2 of article 1 permits the Argentine State to apply its criminal law to offences committed outside its territory by persons performing official State functions. However, the provision would not apply to international civil servants, even if they have Argentine nationality, since they are not agents or employees of the Government.

5. **Australia** reported that, in 2003, the Crimes (Overseas) Act 1964 (the "Act") was amended to extend the criminal laws of Australia's Jervis Bay Territory extraterritorially for the purpose of criminalizing the behaviour of nationals serving as United Nations officials or experts on mission abroad. The Act provides jurisdiction over Australians who are immune from criminal prosecution in a foreign country by virtue of an agreement between Australia and the foreign country or between the United Nations (or United Nations organ) and the foreign country. To date, no prosecution under the Act has occurred.

6. Where Australian Defence Force personnel serve as United Nations officials or experts on mission (such as military observers), they are subject to a system of military discipline established by the Defence Force Discipline Act 1982, which has extraterritorial effect, thereby ensuring accountability at all times for Australian Defence Force personnel deployed outside Australia, including those engaged in United Nations roles. Australian military personnel are criminally accountable for a comprehensive range of offences. This is further enhanced by the inclusion of ancillary offences of attempt, incitement, conspiracy and accessory after the fact.

7. In **Austria**, the Austrian Criminal Code provides the legal basis for the jurisdiction of Austrian Courts regarding crimes committed by Austrian nationals while serving as United Nations officials or experts on mission, where the conduct as defined in the Code constitutes a crime under the laws of the host State. The possibility of extraterritorial jurisdiction as, defined in sections 64 and 65 of the Austrian Criminal Code, is also recognized. All crimes under Austrian law committed by Austrian civil servants[1] in foreign countries are punishable, irrespective of whether or not they are punishable under the law of the State where they were committed.[2] Crimes committed abroad by Austrian nationals irrespective of their status as Austrian civil servants are punishable under Austrian law only if they are punishable under the law of the State where they were committed.[3] Austrian criminal law is also applicable to: crimes committed abroad if Austria is obliged to prosecute them irrespective of the criminal law of the State where the crime was committed, to crimes committed abroad by an Austrian national against another Austrian national (if both have their domicile in Austria), to criminal acts of terrorism committed by an Austrian national abroad, or to the financing of terrorism if the perpetrator was an Austrian national.[4]

8. In **Belgium** the Code of Criminal Procedure provides that the judicial authorities are authorized to punish crimes of a serious nature committed by Belgian nationals while serving as United Nations officials or experts on mission outside the territory of the Kingdom. However, such jurisdiction varies according to the type of criminal conduct concerned or the category of person responsible for it. In general, the judicial authorities can prosecute any Belgian (or any person whose principal residence is in Belgium) if that individual is accused of an act defined as a crime or offence by Belgian law, provided that such act is punishable under the legislation of the country in which it was committed. Nonetheless, if the crime was committed against a foreigner, it can be prosecuted only at the request of the Public

[1] As a rule, Austrian nationals serving as United Nations officials or experts on mission are considered Austrian civil servants.

[2] Sect. 64 (1)(2).

[3] Sect. 65.

[4] Sect. 64 (6)-(10), respectively.

Prosecutor's Office and only after a complaint has been brought by the foreigner against whom the offence was committed or by his or her family, or after official notice is given to the Belgian authority by the authority of the country in which the criminal conduct took place. Certain crimes may be prosecuted without meeting such conditions. Belgian courts are also competent to hear cases of crimes committed abroad which fall under a rule of international treaty or international customary law or a rule of law derived from the European Union, where by reason of such rule Belgium is required, in any way whatsoever, to submit the case to its authorities responsible for criminal prosecutions. While such prosecutions are possible only if the accused is found in Belgium, in the case of certain crimes, the Belgian judicial authorities may institute proceedings whether or not the perpetrator is in Belgian territory. All persons subject to military law who have committed any offence in the territory of a foreign State may also be prosecuted in Belgium whether or not they are found in Belgian territory. The same applies to persons, Belgian or foreign, who are attached in any capacity to an army unit serving in foreign territory, or persons who are authorized to accompany troops of an army corps.

9. **Bosnia and Herzegovina** reported that, under article 12(c) of its Criminal Code, its criminal jurisdiction extends to any crime committed beyond its territory which it is obliged to prosecute under international law. Similarly, its criminal jurisdiction extends to crimes committed by its citizens outside its territory, including when serving as United Nations officials or experts on mission.

10. In **Brazil**, article 7.II.b. of the Penal Code[5] establishes domestic jurisdiction over all crimes allegedly committed by Brazilian nationals, regardless of the place where the crime was committed and of the gravity of the alleged crime. It provides for the application of the internal criminal legislation to all nationals. Brazil also asserts jurisdiction over crimes which the country is obliged to combat under international conventions, even when the crime occurred in the territory of another State. Such provisions are applicable to all Brazilians, including those serving as United Nations officials or experts on mission.

11. **Canada**[6] reported that while there has been some judicial extension of territorial jurisdiction to include cases where only part of an offence has taken place in Canada, or where there is some other real and substantial connection, the general rule, in line with its common law tradition, is to limit the application of Canada's criminal law to events occurring within Canada's territorial jurisdiction.

12. Exceptions to this principle are found in s. 7 of the Criminal Code and the Crimes against Humanity and War Crimes Act. Several such exceptions fulfil international legal obligations to prosecute the acts of Canadians committed outside Canada or to prosecute others accused of extraterritorial offences who are found in Canada. The other exceptions relate to the protection of Canada's essential interests, particularly with respect to offences in areas such as immigration law, the integrity of the Canadian passport and similar matters, as well as maintaining control over Canadian officials and military personnel working abroad. Accordingly, Canada would extend jurisdiction over crimes committed by Canadian nationals while

[5] Statute 2848/1940, as amended by Statute 7209/1984.

[6] A detailed exposition of the applicable Canadian law, as submitted by the Government of Canada, is on file with the Codification Division.

serving as United Nations officials or experts on mission only when they fall within one of those exceptions.

13. **Cyprus** reported that section 5 of its Criminal Code renders all Cypriot citizens criminally accountable for offences committed outside the territory of Cyprus, provided that those offences are punishable under penal laws of the Republic of Cyprus. Specifically, the Cyprus Criminal Code and any law that prescribes a criminal offence are applicable to all offences which have been committed in any foreign country by a Cypriot citizen if: (a) the offence is punishable in Cyprus by imprisonment that exceeds two years; and (b) the act or the omission constituting the offence is also criminalized under the law of the country in which it was committed. Furthermore, the applicability of the Cyprus Criminal Code and any other relevant penal law is established with respect to any person, irrespective of where the crime may be committed, in respect of a number of specific offences.[7]

14. In the **Czech Republic**, section 18 of the Criminal Code[8] provides that the punishability of an act committed by a national of the Czech Republic or by a stateless person holding permanent residence status in the Czech Republic abroad shall be determined on the basis of the law of the Czech Republic. Where the Czech authorities take over a criminal investigation from another State, they determine the punishability of the act under Czech law (except in cases of traffic violations). Accordingly, it is irrelevant whether the act is punishable under the law of the State where it was committed.

15. **Estonia** reported that the Estonian Penal Code recognizes the right to exercise jurisdiction where a crime is committed outside its territory.

16. **Finland** reported that the Finnish Penal Code is largely applicable to offences committed by civilians outside Finland. The Penal Code is applicable when the perpetrator is a Finnish citizen, a person who was permanently resident in Finland at the time of the offence or is permanently resident in Finland at the beginning of the trial. The Penal Code is also applicable if the offence is directed at a citizen of Finland. In principle, while the conduct as defined in the law of the State establishing jurisdiction should also constitute a crime under the laws of the host State, many offences are considered international offences. Such international offences include sexual abuse of a child, genocide, torture and trafficking in human beings and a number of other offences established by international conventions binding on Finland.

17. In **Germany** there are various provisions in the German Criminal Code, expanding the application of German criminal law to various situations with a bearing upon foreign countries, so that criminal responsibility for German United Nations staff on mission is ensured. In section 5 of the Code, various offences are enumerated to which German criminal law applies, regardless of their commission abroad and independent of the laws of the country where the crime is committed. In addition, section 6, numbers 2 to 8 provide for the principle of universal jurisdiction by extending the application of German criminal law to cases dealing with international legally protected interests. The German international criminal code

[7] A detailed exposition of the applicable Cypriot law, as submitted by the Government of Cyprus, is on file with the Codification Division.

[8] Act No. 140/1960.

allows for prosecution of the most serious crimes against international law, such as genocide, crimes against humanity and war crimes, irrespective of being committed abroad or having a domestic nexus. Section 7 of the Code extends the applicability of German criminal law to offences committed by Germans abroad, should the offence be penalized in the country where it is committed, or should the site of the crime not be subject to any penal power.

18. **Greece** reported that article 6(1) of the Greek Penal Code establishes active personality as a basis for jurisdiction and stipulates that the Greek penal laws are applicable to any act that is regarded by Greek law as a felony or misdemeanor and was committed in a foreign country by a Greek national, to the extent that such act is punishable under the laws of that country or was committed in a territory without state organization.

19. Article 7(1) of the Greek Penal Code establishes passive personality as a further basis for jurisdiction by applying Greek penal laws to any act which is regarded by them as a felony or misdemeanor, and was committed abroad by a foreigner against a Greek citizen and provided that it is punishable under the laws of the country where it was committed or it was committed in a territory without state organization. Article 8 further establishes the principle of universal jurisdiction for a number of categories of crimes committed abroad,[9] to the extent that it stipulates that Greek penal laws are applicable to nationals and foreigners alike, irrespective of the laws of the country where the act was committed.

20. Under article 3 of the Greek Military Penal Code, punishable acts committed by the armed forces which do not constitute military crimes are subject to common penal laws. Accordingly, the rules on extraterritorial application of Greek penal laws apply also to ordinary crimes committed abroad by members of the armed forces. Military crimes are punishable irrespective of the place they are committed.[10]

21. **Irish** law provides for extraterritorial criminal jurisdiction only in relation to a limited number of crimes and persons. Serious offences committed by United Nations officials or experts on mission against United Nations and associated personnel would in general be subject to Irish law. However, serious offences committed by United Nations officials or experts on mission against non-United Nations personnel in another State would not be prosecuted in Ireland. Further legislation would be required in order to expand the material and personal scope of Irish extraterritorial criminal jurisdiction.

22. In **Jordan** article 10 of the Penal Code (No. 16 of 1960), as amended, provides for exercise of jurisdiction: over any Jordanian who, as perpetrator, instigator or accomplice, commits, outside the Kingdom, a felony or misdemeanour punishable by Jordanian law; over crimes committed outside the Kingdom by any Jordanian official during or on the occasion of the exercise of his functions; over crimes committed outside the Kingdom by officials of the foreign service or by Jordanian consuls who do not enjoy immunity conferred on them by public international law; over any alien resident in the Kingdom who, as perpetrator, instigator or accomplice, commits, outside the Kingdom, a felony or misdemeanour punishable by Jordanian law, if his extradition has not been requested or accepted. The Penal

[9] A complete list of categories, as submitted by the Government of Greece, is on file with the Codification Division.

[10] Art. 4 of the Military Penal Code.

Code envisages, in article 13, the prosecution of any Jordanian even if he has been prosecuted and sentenced abroad. Furthermore, in Jordan, all public security personnel of all ranks who serve in peacekeeping missions (observers, military detachments, advisers) are subject to the Public Security Act and directives issued by the Directorate of Public Security.

23. **Kenya** reported that the Sexual Offences Act and the Anti-Corruption and Economic Crimes Act criminalize any act of sexual offence and corruption, respectively, committed within its territory. On the basis of the principle of territoriality, any crime committed within Kenya by any United Nations official or expert on mission would be tried locally, provided the domestic laws exist. For those crimes committed by United Nations officials and experts on mission within Kenya for which no domestic law exists, the accused would be extradited to his or her country. Kenya also applies the principle of nationality to prosecute its nationals who commit crimes outside Kenya while serving either as United Nations officials or experts on mission.

24. The Criminal Law of the **Republic of Korea** applies to those nationals who commit crimes outside its territory. The Military Criminal Law of the Republic of Korea applies to military personnel of the Republic of Korea who commit crimes outside its territory.

25. Pursuant to article 65(1) of the **Liechtenstein** Criminal Code, the Liechtenstein courts have jurisdiction over all criminal acts committed by citizens abroad if the conduct constitutes a crime under the laws of the host State. For a number of particularly serious offences, enumerated in article 64, dual criminality is not required. Accordingly, the Liechtenstein courts assert jurisdiction over crimes committed abroad by Liechtenstein nationals serving as United Nations officials or experts on mission.

26. In **New Zealand** the Armed Forces Discipline Act 1971 provides jurisdiction over all acts carried out by members of the New Zealand Defence Force whether in New Zealand or elsewhere, and applies equally to members of the New Zealand Defence Force who are members of a United Nations force. The United Nations (Police) Act 1964 provides for jurisdiction over members of the New Zealand Police forming part of a United Nations force. The Crimes and Misconduct (Overseas Operations) Act 2004 has the same effect, and applies to any person who is not a member of the armed forces and not already covered by the United Nations (Police) Act 1964 and is serving as part of an "overseas operations force" outside New Zealand.

27. New Zealand has no legislation that specifically provides for criminal jurisdiction to be taken over New Zealand nationals serving as United Nations officials or experts on mission. These individuals are, however, still subject to New Zealand law to the extent that it provides for extraterritorial jurisdiction for certain offences. In many cases extraterritorial jurisdiction is asserted in order to implement particular international obligations.

28. **Norway** reported that section 12(1)(3) of the Norwegian General Civil Penal Code of 1902 establishes jurisdiction over a wide range of serious crimes committed by Norwegian nationals abroad. Furthermore, Norwegian criminal law is applicable if the act is punishable pursuant to Norwegian law as well to the law of the country in which the act is committed. It is not required that Norwegian law and foreign law

be completely identical. The rules on jurisdiction under that provision apply to all Norwegian nationals, including Norwegians serving as United Nations officials or experts on mission, as well as diplomats and other persons enjoying criminal immunity abroad. These rules are largely reaffirmed by a new Norwegian Penal Code (the Penal Code of 2005) which is being drafted. New provisions on jurisdiction have been adopted, but have not yet entered into force. Pursuant to section 5 of the Penal Code of 2005, Norwegian criminal legislation shall be applicable to certain acts committed by Norwegian nationals abroad when the acts are also punishable under the law of the country in which they are committed; are regarded as a war crime, genocide or a crime against humanity, are regarded as a breach of the international law of war, are regarded as a child marriage or a forced marriage, are regarded as genital mutilation, or are directed against the Norwegian State or a Norwegian State authority, or were committed outside the area of sovereignty of any State and are punishable by imprisonment. Section 6 of the Penal Code of 2005 extends the general rules of jurisdiction to apply to acts that Norway has a right or an obligation to prosecute under agreements with foreign States or under international law generally.[11]

29. **Poland** reported that its nationals, including United Nations personnel or experts on mission who commit an offence in the course of fulfilling their mission abroad are subject to criminal liability under the rules laid down in chapter XII of the Polish Criminal Code on responsibility for offences committed abroad.

30. **Qatar** reported that the Penal Code of the State of Qatar, as stated in Law 11 of 2004, enacting the Penal Code, allows for the prosecution of perpetrators or accomplices for certain offences committed abroad (art. 17). Furthermore, any citizen of Qatar who has, while outside Qatar, committed an act that is considered a felony or misdemeanour under the Penal Code, shall, on returning to Qatar, be punished in accordance with the provisions of the Code if the act is punishable under the law of the country in which the act was committed (art. 18). Limitations on this provision are to be found in article 19 of the Penal Code.

31. Citizens of **Serbia** who, while serving as United Nations officials or experts on mission, commit a criminal offence punishable by the laws of the Republic of Serbia are accountable before a Serbian court of law. The laws of the Republic of Serbia, however, do not provide specific penalties for United Nations officials and experts on mission who are alleged to have committed crimes of a serious nature.

32. **South Africa** reported that, like other common law countries, it does not exercise extraterritorial jurisdiction on grounds of nationality. However, South Africa has taken measures to establish extraterritorial jurisdiction in certain circumstances. For example the Defence Act makes provision for criminal jurisdiction over military and civilian elements of its defence force deployed beyond South Africa. Similarly, legislation in the process of being drafted will assert jurisdiction over members of the South African Police Service who perform duties outside the Republic. Furthermore, an amendment to the Criminal Procedure Act, of 1977 was introduced in Parliament in 2008 with a view to enabling prosecution against South African nationals who committed serious offences while serving abroad. Likewise, the Criminal Law (Sexual Offences and Related Matters)

[11] A more detailed discussion of the position of Norway, as submitted by the Government of Norway, is on file with the Codification Division.

Amendment Act 32, of 2007, establishes extraterritorial jurisdiction over citizens and those ordinarily resident in the Republic who are alleged to have committed a sexual offence or other offence under the Act outside its borders.

33. **Switzerland** reported that articles 3 to 7 of the Swiss Criminal Code provide that prosecutions are not limited to persons who commit crimes and offences in Switzerland.[12] Crimes committed by Swiss nationals abroad are also covered when those crimes are punishable in the territory in which they have been committed or when the place where the act was committed does not fall under any criminal jurisdiction (Criminal Code, art. 7, para. 1). Swiss criminal law also establishes a limited universal jurisdiction that applies in the case of a series of specific crimes: in those instances, Swiss criminal courts are authorized to prosecute a foreign perpetrator who committed a crime abroad if that person is in Switzerland and has not been extradited (Criminal Code, arts. 5 and 6). The Criminal Code provisions are supplemented, in the case of certain categories of persons, by the provisions of the Military Criminal Code, particularly articles 3, 8 and 10. Accordingly, the Swiss judicial authorities are fully competent to prosecute its nationals while serving as United Nations officials or experts on mission.

34. **Tunisia** reported that its Criminal Code, section 305, provides that a Tunisian citizen may be prosecuted and placed on trial by Tunisian courts for a crime or misdemeanour committed outside the territory of the Republic that is punishable under Tunisian law, unless that crime is not punishable in the country in which it was committed, or the accused can show that he was definitively sentenced abroad and that the sentence has been served or has lapsed or that he has benefited from an amnesty. Accordingly, Tunisian nationals may be prosecuted for crimes which they committed abroad as United Nations officials or as experts on mission.

35. The **United States of America** reported that its nationals who commit crimes while working for the United Nations or when acting as experts on mission may be prosecuted under a broad array of statutes, even when those crimes are committed outside the United States. The United States also has jurisdiction generally to prosecute any federal crime where even a minor part of the crime was committed in the United States, and the bulk of the conduct was committed abroad. Such jurisdiction is particularly broad where a conspiracy of two or more people is involved, because an act by one conspirator in the United States can bring the entire conspiracy within United States criminal jurisdiction. Furthermore, under the Travel Act, any person who travels or uses a facility in foreign commerce (meaning between the United States and a foreign country) for the purpose of distributing the proceeds of unlawful activity or committing a crime of violence in furtherance of unlawful activity, or otherwise carrying on an unlawful activity, can be prosecuted in the United States. The United States also has jurisdiction over certain corruption-related offences even when most of the conduct takes place abroad.

36. **Yemen** reported that article 3 of its Penal Code adopts the territoriality principle with respect to crimes. The Penal Code also applies to crimes that are committed outside the State territory and concern the Yemeni courts, in accordance with the Law of Criminal Procedure.

[12] A detailed exposition of the applicable Swiss law, as submitted by the Government of Switzerland, is on file with the Codification Division.

III. Cooperation between States and with the United Nations in the exchange of information and the facilitation of investigations and prosecutions

37. **Argentina** observed that its judicial authorities would cooperate with the United Nations in the investigation of any offence committed by one of its officials or experts. The due process rights applicable to such proceedings would be those in force under Argentina's procedural law, in accordance with the rights and guarantees enshrined in the National Constitution and in international instruments having constitutional status, as enumerated in article 75, paragraph 22, of the Constitution.

38. **Australia** reported that legal cooperation with other countries to facilitate investigation of United Nations officials and experts on mission is covered by the Mutual Assistance in Criminal Matters Act 1987, which allows Australia to request and provide mutual assistance to any country on a discretionary basis (such process is facilitated by 26 bilateral treaties and multilateral conventions to which Australia is a party that contain mutual assistance provisions), but not to international bodies such as the United Nations. Accordingly, any formal request from the United Nations to Australia for mutual assistance would need to be made through another country. No mutual assistance requests have yet been received from other States regarding the investigation of United Nations Officials or experts on mission. It is also possible for Australia to provide assistance informally, for example, the Australian Federal Police reports one instance of providing information to the United Nations regarding a complaint made against an Australian national deployed overseas as an expert on mission. Australia observed that it currently has bilateral extradition treaties with 35 countries.

39. **Belgium** indicated its willingness, subject to the relevant provisions of its domestic law, to exchange information and facilitate any investigations and prosecutions implicating United Nations officials and experts on mission who are alleged to have committed crimes of a serious nature.

40. **Brazil** reported that it had entered into a number of bilateral agreements on judicial cooperation and mutual assistance in criminal matters, and that it was willing to cooperate closely with the United Nations. It also noted that the principle of due process of law is enshrined in its Federal Constitution of 1988.

41. **Canada** reported that the Extradition Act allows and regularly authorizes the extradition of its citizens and residents to countries and international criminal tribunals with which it has concluded extradition treaties or in accordance with commitments made in multilateral treaties. Canada also provides assistance to other States and international tribunals in the investigation of crimes committed abroad or on its territory by persons subject to diplomatic or consular immunity. Various forms of cooperation could be extended pursuant to treaties, letters rogatory, and non-treaty requests.

42. The **Czech Republic** is a party to numerous multilateral and bilateral treaties concerning legal assistance in criminal matters. Furthermore, under section 376 of the Code of Criminal Procedure (Act No. 141/1961), in the absence of an international treaty on cooperation in criminal matters, the essential condition for entering into such cooperation is reciprocity. Since the United Nations and its organs and agencies have legal personality, Czech law enforcement authorities

would be competent to accept requests, ask for information and use the evidence provided by the United Nations, but would not be competent to provide to the United Nations any information about ongoing investigations or court proceedings. The United Nations would merely be entitled to receive a copy of the judgement and reasoning. In investigating crimes, Czech authorities would communicate primarily with the judicial and investigating authorities of the State where the crime was committed. In addition, Czech rules of criminal procedure would not permit the United Nations Disciplinary Code or similar internal rules and regulations of the Organization to be applied in determining whether the act is punishable.

43. **Estonia** observed that the regulation of cooperation in criminal procedure, undertaken under the terms of its Code of Criminal Procedure (sects. 433-508), accords with the requirements of paragraph 4 of resolution 62/63.

44. **Finland** confirmed that, as a State member of the European Union, it is party to several multilateral agreements concerning the extradition of offenders in addition to the European Community legislation on the recognition of judgements and applicable law. Moreover, Finland has signed a number of bilateral agreements on the extradition of offenders with non-European Union States. Finland would welcome international efforts to create a common multilateral code of conduct for cases involving competing jurisdictions, which would be based on granting jurisdiction to the state of nationality, to the extent it is able to ensure the effectiveness of extradition procedures. It reiterated the fact that while it is possible to conduct investigations and trials in different States, evidence acquired by foreign authorities is not typically admissible in domestic courts.

45. **Greece** has concluded several bilateral treaties on extradition and mutual legal assistance in criminal matters. In the absence of a treaty, requests for extradition or legal assistance are examined in accordance with relevant provisions of domestic law.

46. In **Jordan** there is ongoing cooperation between the United Nations and Jordanian public security units operating on missions to facilitate the investigation of personnel by the Directorate of Public Security.

47. **Kenya** has signed mutual legal assistance bilateral agreements with various countries so as to facilitate cooperation in criminal investigations and the possibility of extradition.

48. As of June 2008, the **Republic of Korea** has concluded 23 treaties on extradition and 18 treaties on mutual legal assistance in criminal matters. Those treaties provide the legal framework for mutual cooperation in the exchange of information and the conduct of investigation or other necessary cooperative measures. In addition, in accordance with the Extradition Law and the Law on International Mutual Legal Assistance in Criminal Matters, extradition and other mutual legal assistance may be undertaken on a reciprocal basis.

49. The **Liechtenstein** Law on Mutual Legal Assistance in Criminal Matters provides a basis for Liechtenstein authorities to fully cooperate with all jurisdictions, even in the absence of a bilateral treaty.

50. **New Zealand** cooperates with other States in exchanging information and facilitating criminal investigations and prosecutions under the framework provided by the Mutual Assistance in Criminal Matters Act 1992. The Act does not cover

mutual assistance between New Zealand and international organizations but it does not limit the ability of New Zealand authorities to assist and facilitate requests from the United Nations to the extent that assistance can be given under general New Zealand law. The New Zealand Government has in the past provided information to assist United Nations investigations, and will continue to do so as appropriate.

51. **Norway** reported that there are no economic or other obstacles to close cooperation with the relevant authorities in the country where the crimes in question are committed with regard to exchange of information and investigation.

52. In **Poland**, international cooperation in prosecuting and punishing perpetrators of offences committed during the performance of peacekeeping missions takes place in compliance with general rules, pursuant to the provisions of the Code of Criminal Procedure (Part XIII, chap. 62) on judicial assistance.

53. In **Qatar**, extradition is regulated by articles 409 and 410 of the Code of Criminal Procedure.

54. **South Africa** proposed that a protocol of cooperation and liaison between Member States and the United Nations be developed to allow State investigators to work in concert with the Office of Internal Oversight Services.

55. In **Switzerland** judicial assistance and cooperation with other States is governed by numerous bilateral and multilateral agreements, while cooperation with the United Nations is covered by the relevant Headquarters Agreement.

56. **Tunisia** reported that sections 331 to 335 of the Tunisian Code of Criminal Procedure regulate cooperation with foreign States in order to facilitate investigation and prosecution and the exchange of information. Tunisia has also concluded bilateral agreements with other States on judicial cooperation regarding criminal matters.

57. In the **United States of America** the courts, as a matter of discretion, may provide assistance to foreign States, including compelled testimony and document production, as well as other information in response to letters rogatory. The United States has over 50 bilateral mutual legal assistance treaties that cover a wide array of serious crimes, and is also a party to numerous multilateral conventions that provide a legal basis for judicial assistance. The United States also has over 110 bilateral extradition treaties pursuant to which the United States can extradite offenders, including United States citizens, or request extradition. The list of extraditable offences is further expanded by various multilateral treaties where the requesting State is also a party to the relevant convention and has a bilateral extradition treaty with the United States.

IV. Bringing credible allegations that reveal that a crime may have been committed by United Nations officials to the attention of States against whose nationals such allegations are made

58. In order to give effect to Article 105 of the Charter of the United Nations, which grants the Organization privileges and immunities and provides, inter alia, that "... officials of the Organization shall ... enjoy such privileges and immunities

as are necessary for the independent exercise of their functions in connection with the Organization", the General Assembly adopted the Convention on the Privileges and Immunities of the United Nations (hereinafter "the General Convention") on 13 February 1946, to which 154 Member States are parties. Under that treaty, officials are "immune from legal process in respect of words spoken or written and all acts performed by them in their official capacity" (sect. 18 (a)), and experts on mission enjoy "immunity from personal arrest or detention ..." and "in respect of words spoken or written and acts done by them in the course of the performance of their mission, immunity from legal process of every kind" (sect. 22 (a) and (b)). Senior officials at the rank of Assistant Secretary-General and above enjoy the same privileges and immunities as those accorded to diplomatic envoys (sect. 19), including immunity from criminal jurisdiction as provided in respect of diplomatic envoys under the Vienna Convention on Diplomatic Relations, of 1961.

59. Certain types of agreements entered into between the Organization and Member States also grant privileges and immunities to the United Nations consistent with the Charter, such as headquarters agreements with host States, status-of-forces agreements and status-of-mission agreements. Some Member States hosting offices of the United Nations have adopted national laws and regulations that provide detailed arrangements for the application of the privileges and immunities of officials of the Organization in the national context. All these agreements are therefore sources of legal rules for determining the scope of privileges and immunities in the specific context of the host country.

Role of the Secretary-General

60. Pursuant to section 20 of the General Convention (in respect of officials) and section 23 (in respect of experts), the Secretary-General has the authority and the duty to waive immunity where, in his opinion, "immunity would impede the course of justice and it can be waived without prejudice to the interests of the United Nations". In the interest of maintaining the international character and the independence of personnel who serve in the United Nations, whether officials or experts on mission, and also to ensure that the provisions of the General Convention are applied in a consistent manner and in the interests of the Organization, the decision whether to waive immunity in any particular case is for the Secretary-General alone to make.

61. This was reaffirmed by the International Court of Justice in its advisory opinion on the Difference relating to immunity from legal process of a Special Rapporteur of the Commission on Human Rights of 29 April 1999, which recognized that "the Secretary-General, as the chief administrative officer of the Organization, has the primary responsibility to safeguard the interests of the Organization; to that end, it is up to him to assess whether its agents acted within the scope of their functions and, where he so concludes, to protect these agents, including experts on mission, by asserting their immunity" (para. 60). Similarly, consistent with sections 20 and 23 of the General Convention, the Court reaffirmed that it is for the Secretary-General to determine whether the official or expert on mission acted within the scope of his or her functions.

62. Once the Secretary-General determines that the official or expert on mission acted outside the scope of his or her functions, unless the official in question enjoys privileges and immunities accorded to diplomatic envoys in accordance with

section 19 of the General Convention or pursuant to the relevant headquarters agreements, status-of-forces agreements or status-of-mission agreements, the official or expert on mission would not enjoy any immunity and a waiver would not be necessary.

63. The relevant terms and conditions of service contain provisions that clearly recall the purpose and scope of the privileges and immunities accorded to them and the accountability of such personnel in a manner consistent with the Charter of the United Nations and the General Convention.

Individuals having the status of officials and experts on mission

64. For the purposes of the privileges and immunities granted under the General Convention, the term "officials of the Organization" has been defined by the General Assembly, in its resolution 76 (I) of 7 December 1946 as "all members of the staff of the United Nations, with the exception of those who are recruited locally and are assigned the hourly rate". Therefore, all staff members of the United Nations, regardless of nationality, residence, place of recruitment or rank, are considered officials with the sole exception of those who are both recruited locally and assigned to hourly rates. Furthermore, United Nations Volunteers may enjoy privileges and immunities as "officials" of the United Nations when specifically provided for in agreements such as status-of-forces agreements and United Nations Development Programme standard basic assistance agreements.

65. Individuals having the status of "experts on mission" may include persons engaged by the Organization on a consultant/contractor contract or designated by United Nations organs to carry out missions or functions for the United Nations such as rapporteurs of the Human Rights Council or members of the International Law Commission. Furthermore, in the context of peacekeeping or peace support operations, some categories of personnel have the status of experts on mission. These include military observers, military liaison officers, military advisers, arms monitors, members of formed police units, seconded individual United Nations police and seconded corrections officers. The categories of personnel deemed experts on mission are usually provided in the relevant status-of-forces or status-of-mission agreements, although such categories are not always exhaustive.

Ensuring criminal accountability

66. It is the policy of the Secretariat that officials and experts on mission should be held accountable whenever they commit criminal acts not only because of the prejudice or harm caused to the victims but also because they undermine the work and image of the United Nations. To that effect, various measures have been put in place. For example, in the context of sexual exploitation and abuse, the Secretary-General promulgated in his bulletin ST/SGB/2003/13 of 9 October 2003 that "[i]f, after proper investigation, there is evidence to support allegations of sexual exploitation or sexual abuse, these cases may, upon consultation with the Office of Legal Affairs, be referred to national authorities for criminal prosecution" (sect. 5).

Paragraph 9 of resolution 62/63

67. Given the legal issues involved in the referral to States of credible allegations that reveal a crime may have been committed, including issues related to the privileges and immunities of the United Nations under the General Convention, all

such cases are reviewed by the Office of Legal Affairs before a final determination is made on any particular referral. In reviewing such cases, the Office of Legal Affairs consults with the relevant programme managers as appropriate.

68. For purposes of the present report, the Office of Legal Affairs requested information relevant to the reporting requirements of paragraph 9 from all relevant Departments of the United Nations Secretariat as well as from all the programmes and funds of the United Nations. The following information covers the period from 6 December 2007, the date of adoption of the resolution, to 30 June 2008. It covers cases actually referred to States, and for reasons of confidentiality does not include cases under investigation, which could possibly result in a referral in the future, where the credibility of the allegations has not yet been established. The Organization will continue its policy of reviewing cases where there are credible allegations that reveal a crime may have been committed by its officials and experts on mission, and should it decide that referral to law enforcement authorities of the State of nationality is warranted in any such cases, appropriate action will be taken in accordance with the General Convention and General Assembly resolution 62/63.

Referrals in relation to officials

69. During the reporting period, credible allegations against two officials were referred by the United Nations to the State of nationality. One case related to an alleged procurement-related crime and another to an allegation of rape. Both officials were locally recruited and, therefore, the State of nationality and the territorial State was the same. As at the date of the preparation of the present report, the United Nations has not received any information from the relevant States on the action taken. No requests for assistance have been received by the Secretariat from the State in question.

Referrals in relation to experts on mission

70. During the reporting period, credible allegations against one expert on mission were referred by the United Nations to the State of nationality. This case related to an allegation that the expert on mission had raped a minor. The expert in question had already been repatriated to his State of nationality. No requests for assistance have been received by the Secretariat from the State in question.

V. Ensuring that prospective experts on mission are informed of the expectation that they should meet high standards in their conduct and behaviour and will be held accountable for possible criminal conduct

71. In February 2008, the Chef de Cabinet of the Secretary-General addressed a memorandum to the heads of all departments, funds and programmes, bringing to their attention the terms of paragraph 5 of resolution 62/63, and urging them to take it into account when making the necessary requests for personnel to serve as experts on mission.

VI. Taking other practical measures to strengthen existing training on United Nations standards of conduct, including through predeployment and in-mission induction training

72. Pursuant to the Secretary-General's commitment to the zero-tolerance policy against sexual exploitation and abuse by United Nations peacekeeping personnel, the Department of Peacekeeping Operations and the Department of Field Support have developed a three-pronged strategy to address sexual exploitation and abuse, consisting of: mechanisms established to support the prevention of misconduct; enforcement of United Nations standards of conduct; and remedial action.[13]

73. The Department of Peacekeeping Operations/Department of Field Support have sought to ensure adherence to the United Nations code of conduct and related rules, Secretary-General's bulletins and administrative instructions. Among the prevention mechanisms established, since the beginning of 2006, the Department of Peacekeeping Operations/Department of Field Support have concentrated on training and awareness-raising activities.

74. In an effort to eradicate misconduct, including sexual exploitation and abuse, the training of United Nations peacekeeping personnel is given priority. Training is considered particularly important given the frequent rotation of peacekeeping personnel, especially peacekeepers. The Conduct and Discipline Unit at Headquarters was established in 2005. The Conduct and Discipline Units were also established in 2005 in several missions and expanded to date to cover 24 Department of Peacekeeping Operations-led missions. Conduct and Discipline Units at Headquarters and in mission act both independently and collaboratively to facilitate training on misconduct for all categories of peacekeeping personnel. Likewise, UNDP trains personnel on United Nations standards of conduct, both at Headquarters and at the country-office level.

Capacity-building at Headquarters in the Department of Peacekeeping Operations/Department of Field Support

75. The Conduct and Discipline Unit at Headquarters, in coordination with the Integrated Training Service, produced three standardized modules on prevention of sexual exploitation and abuse designed for all levels and categories of peacekeeping personnel. A generic training module entitled, "Module 1: Prevention of sexual exploitation and abuse" is mandatory at induction for all peacekeeping personnel. In the light of particular responsibilities of mid-level peacekeeping personnel with regard to codes of conduct, a module was developed entitled "Combatting Sexual Exploitation and Abuse — Role of Mid-level Managers and Commanders". Recognizing the significant role that senior officials play in ensuring a zero-tolerance approach to misconduct, an additional module was developed entitled, "Combatting Sexual Exploitation and Abuse — Role of Senior Mission Leadership".

76. A documentary film, "To Serve with Pride: Zero Tolerance for Sexual Exploitation and Abuse", was jointly produced by the Department of Peacekeeping Operations/Department of Field Support, the United Nations Development Programme, the United Nations Children's Fund, and the Office for the

[13] See also A/62/758 and A/60/682.

Coordination of Humanitarian Affairs. Launched in December 2006, it is utilized in training sessions in peacekeeping operations and other United Nations duty stations.

77. The Conduct and Discipline Unit at Headquarters has organized a series of training sessions with Conduct and Discipline Unit officers in the field and practitioners from other United Nations departments and specialized agencies. The training provides an opportunity to orient new officers and refresh seasoned peacekeeping personnel on their roles as advisers and case officers with regard to current rules, guidance and procedures relevant to conduct and discipline. Annual workshops for the chiefs of the Conduct and Discipline Units are also held to share challenges and best practices and improve practices in field missions and Headquarters. Other Headquarters training has focused on specific initiatives, such as the roll-out of a misconduct tracking system, a secure, web-based system designed to record, track and report on allegations of misconduct by peacekeeping personnel.

78. In 2006, the Community of Practice on Conduct and Discipline was established, which is a knowledge-sharing initiative to link the Conduct and Discipline Units in peacekeeping missions as well as practitioners working in related fields. In 2007, the Conduct and Discipline Unit also established Internet and Intranet websites which provide relevant documents and information on conduct and discipline.

79. Additionally, the Conduct and Discipline Unit at Headquarters has coordinated and overseen initiatives in the field to raise awareness of the code of conduct. For example, in 2007, the Conduct and Discipline Unit at Headquarters held six field-based workshops to develop mission-specific strategies to support a communications campaign to combat prostitution and transactional sex.

80. The Conduct and Discipline Unit at Headquarters further trains potential and selected senior leaders in the Senior Mission Leadership course and Senior Leadership Induction programme, respectively, designed to better prepare heads of missions and other leaders. Additionally, the Unit provides frequent briefings on conduct and discipline matters to other departments.

81. The training sessions cover conduct and discipline issues, such as: the Conduct and Discipline Unit mandate; the code of conduct and core values; examples and consequences of misconduct and sexual exploitation and abuse; individual and management responsibilities; obligations for reporting; disciplinary and administrative procedures; and rights and responsibilities of staff members.

82. As requested by the General Assembly in its resolution 62/247, the Office of Internal Oversight Services Investigation Division has commenced development of a comprehensive investigation learning programme, designed to build the capacity of programme managers and other staff with investigative responsibilities outside the Office of Internal Oversight Services. Such training seeks to ensure the prompt and effective disposition of cases consistent with prevailing jurisprudence, investigative standards, and administrative requirements in the United Nations.

83. The Integrated Training Service has conducted several surveys and determined that training on sexual exploitation and abuse is consistently delivered at predeployment and in-mission induction training, and that more peacekeeping personnel attend the course on sexual exploitation and abuse than any other mandatory training course.

84. Since 2007, the UNDP Legal Support Office has been training staff on the United Nations standards of conduct and disciplinary procedures; and is in the process of developing an online legal training tool that will be accessible by all UNDP personnel.

Capacity-building in peacekeeping missions

85. In December 2007, the Department of Peacekeeping Operations mandated the training of a broad spectrum of cross-cutting issues to be provided to new staff as soon as possible after deployment to Department-led missions, including the prevention of sexual exploitation and abuse, and other conduct and discipline issues. A previous instruction distributed to missions in August 2007 mandated the predeployment induction for all new civilian staff members recruited for missions. The strategy to integrate training and awareness-raising will build upon the training strategy that the Conduct and Discipline Units and other organizational units have already established in the field.

86. A significant percentage of all United Nations peacekeeping personnel in missions has been trained on sexual exploitation and abuse since it became mandatory in 2005. The Integrated Training Service in the United Nations Logistics Base, Brindisi, is responsible for compulsory civilian predeployment training. In-house Integrated Training Service trainers conduct induction courses approximately twice per month on a variety of topics, including on the code of conduct and sexual exploitation and abuse. All Conduct and Discipline Units are providing training to their respective missions on the United Nations standards of conduct, and other related topics such as sexual exploitation and abuse.

87. The Conduct and Discipline Units in mission, either alone or in close collaboration with the Integrated Mission Training Cell, are responsible for the substantive development of customized training materials to reflect the needs of the mission and cultural aspects of the host population. Some missions have sought to provide additional mission-specific material to complement their trainings. Many Conduct and Discipline Units develop training materials that are tailored to the specific type of training (induction or in-mission refresher training) and category of peacekeeping personnel, such as police officers and military liaison officers.

88. The Conduct and Discipline Units are also responsible for developing and implementing a mission-focused training strategy, conducting trainings, and raising awareness on issues related to misconduct. The Conduct and Discipline Units in the field regularly carry out scheduled induction and in-mission courses as well as train trainers in regional offices who can then conduct briefings on misconduct to others. Many missions have developed mission-tailored evaluations to measure the impact of the training provided. The Conduct and Discipline Units have also incorporated various local issues in their training to sensitize peacekeeping personnel about matters particular to the host country. Likewise, the UNDP Ethics Office has trained field staff on ethics in various regions.

89. Recognizing the importance of senior management in training and raising awareness of misconduct, the Conduct and Discipline Units in missions play a significant role in informing senior officials and heads of mission of their responsibilities as role models, presenting the most recent trends and analysis of misconduct, and advising necessary action pursuant to established codes of conduct.

Heads of mission routinely participate in briefings to specific audiences and town hall meetings.

90. In addition, mission-based awareness-raising initiatives are a significant part of the strategies of the Conduct and Discipline Units in mission to prevent sexual exploitation and abuse. The units seek to raise awareness by reaching out to host populations, including local government officials, relevant civil society organizations, international organizations or non-governmental organizations.